

**BOARD OF VARIANCES AND APPEALS  
REGULAR MEETING  
APRIL 14, 2011**

**(Approved: 4/28/2010)**

**A. CALL TO ORDER**

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Kevin Tanaka at approximately, 1:35 p.m., Thursday, April 14, 2011, in the Planning Department Conference Room, first floor, Kalana Pakui Building, 250 South High Street, Wailuku, Island of Maui.

A quorum of the Board was present. (See Record of Attendance.)

**B. WELCOME NEW MEMBERS: JACQUELINE HARAGUCHI AND PATRICK DE PONTE**

Mr. Kevin Tanaka: Okay. Call the meeting of the Board of Variances and Appeals to order. It is now 1:35 and we have a quorum of seven Members. The first thing, we'd like to welcome Mr. Patrick De Ponte. Welcome. If you wanna introduce yourself to the Members. Say a little about yourself.

Mr. Patrick De Ponte: My name is Patrick De Ponte. I'm half Japanese, Portuguese, Hawaiian. And I retired from McCabe, Hamilton and Renny. I'm a Long Shoreman. I retired six years now. And I kinda know you personally, yeah, your dad. And I'm surprised I met Ray. I know Castro. I'm looking forward working with you guys. Hopefully, we can get things accomplished. Okay.

Mr. Tanaka: Alright. Thank you very much and welcome. Bart, if you guys wanna introduce yourselves to—

Mr. Bart Santiago: Patrick, I'm Bart Santiago. This is my second year on the Board. I'm the Finance Director for the Grand Wailea. Welcome.

Mr. De Ponte: Thank you.

Mr. Rick Tanner: Patrick, I'm Rick Tanner, also my second year. Bart and I came on at the same time a year ago. I'm the General Manager at the Whaler Resort in Kaanapali. Welcome.

Mr. De Ponte: Thank you.

Ms. Rachel Ball Phillips: Hi. I'm Rachel Phillips. I'm a Real Estate Broker and I'm also a licensed General Contractor. Nice to meet you.

Mr. Tanaka: And you know Steve and Ray. Okay, let's see.

Mr. Stephen Castro, Sr.: What about James?

Mr. Tanaka: Oh, sorry.

Mr. De Ponte: Wasn't there supposed to be another lady?

Mr. Tanaka: Yeah, Bernice. She didn't confirm— Oh, yeah, there's Jacqueline Haraguchi. She had an emergency that came up today so she's not able to be here. Okay, the next item would be election of Chairperson and Vice-Chairperson for the upcoming year. How do we go about doing that?

### **C. ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON FOR THE 2011-2012 YEAR**

Mr. James Giroux: What we'll do is we'll take nominations from the top. You don't have to have a second to nominate. And then we'll go to vote. You'll vote from – in the order that the people are nominated. And then once you have a Chair, the Chair will take over the meeting, and then run the election for the Vice-Chair.

After nominations were duly taken and discussion ensued, the following were elected:

**Kevin Tanaka to the Office of Chairperson and Rick Tanner to the Office of Vice-Chairperson.**

Chairman Tanaka: Thank you very much. The next item on the agenda is orientation.

### **D. ORIENTATION**

1. **County of Maui Sexual Harassment Policy**
2. **Area Variances**
3. **Use Variances**
4. **Rules of Practice and Procedure for the Board of Variances and Appeals**
5. **Title 12, Streets, Sidewalks, and Public Places, Maui County Code (MCC)**
6. **Title 16, Buildings and Construction, MCC**
7. **Title 18, Subdivisions, MCC**
8. **Title 19, Zoning, MCC**
9. **Ethics**
10. **Sunshine Law**
11. **Discussion of Boards and Commissions Booklet distributed by the Department of the Corporation Counsel**
12. **Maui County Charter**
13. **Chapter 91, Administrative Procedure, Hawaii Revised Statutes (HRS)**
14. **Chapter 92, Public Agency Meetings and Records, HRS**

Chairman Tanaka: And we've discussed this that because there are three Members who have not gone through this orientation, but two out of the three are not here, deferring this matter to a later date would make sense. But my biggest fear is that if we defer it to the next meeting, and by chance one or two other Members are not here, I asked James if it's possible for him to kinda give an accelerated version of the orientation, and actually, have another orientation when the other two Members are present. I made the comment: we're not tired of hearing James talk so—

Mr. Giroux: You know, what I've done before with other boards where, you know, we had orientation, but we didn't have anybody knew is that I just took questions, if you wanna do that. You know, if people have specific things that have come up in the past that they were wondering where does that fit in with the law, or maybe I explained something that didn't quite make sense. If there's anything like that, maybe just a Q&A about what's on the agenda, and then I can do the power point when everybody's here.

Chairman Tanaka: I guess. Pat, have you had a chance to go over all of your materials?

Mr. De Ponte: I wasn't – well, it's a lot. I read for a while and I stopped. It'll take time, yeah? Yeah, I was reading a little.

Chairman Tanaka: Yeah, you got the binder?

Mr. De Ponte: Yeah.

Chairman Tanaka: Yeah, actually, that's something as well when we do have that orientation. So let us defer that. Does anybody have any questions for James, or the Planning Department, or anything that – right now, anyway? None? Okay, so we'll apologize. I don't know who was here that was gonna do any presentations. Sorry about that.

Mr. Allan DeLima: . . . (inaudible) . . .

Chairman Tanaka: Thanks. We'll be calling on you later. Any discussions about anything that has gone on, or questions, or—?

Ms. Trisha Kapua`ala: Maybe I can do an accelerated version of Public Works' criteria because the next two variances are both Public Works' variances.

Chairman Tanaka: Could you?

Ms. Kapua`ala: I already introduced myself: Trisha Kapua`ala, Staff Planner, for the Zoning Administration and Enforcement Division. This is my Supervisor, Mr. Francis Cerizo. And Tremaine Balberdi, she is the Board's Secretary. So we are your staff. At any time, please call us. We'll be happy to be of service. E-mails are also very good. We're very busy on the phone. Let's see. I'll try to get through this as quickly as possible.

You have the jurisdiction over area variances and use variances. And these are the Maui County Code titles that you have the authority over: Title 12, 16, 18, and 19. These three are all a part of the Department of Public Works. And Title 19 would be the Department of Planning. So these have to do with structures, infrastructures, driveways, plumbing, electrical. We deal with land use, and then also appeals. We also process all contested cases for the County.

These are area variances where height variances are granted at the Kamehameha Schools, Maui, for about 40 feet buildings and a 50-foot building where 35 feet was the maximum. I think we can skip through this for now. Should we just go over the criteria? The basics? Not use. This is for land use. Yeah, this would not apply to Public Works. Okay, let's cancel. Okay. Let me move on

to the next slide.

Okay, our next variance is gonna be concerning Title 16. And this is where for a variance, the applicant must qualify for all of the criteria involved. And according to the code, the applicant must prove that the strict application, operation, or enforcement of the provision will result in practical difficulty or unnecessary hardship. That the granting of the variance shall not be detrimental to public health, safety, or welfare. The granting of the variance will not be injurious to the adjoining lots and the buildings thereon. And the granting of the variance will not be contrary to the purposes of the code or public interest.

When we have a full-on presentation, these terms are very critical: practical difficulty, health safety and welfare, public interest. And the staff will provide you with a staff report trying to analyze these things. I think Planning does a better job at it. Public Works, being that they're mostly engineers, you know, that type of background, they're very practical when they look at their code, you know, as far as analyzing it. Planning is a little bit more wordy. And this is the Title 18 criteria that the applicants must qualify for. They're basically the same except here, that there are special geographical or physical circumstances or conditions affecting the property that are not common to all property in the area. This is a very strong theme within variances because variances run with the land and not with applications. Special management area permits, use permits, those types of things that go before the Planning Commission and Council. Those are applicant-based. It's based on your request—the applicant. But a variance shouldn't be based on the applicant. It's based on the land. It's supposed to be where the variance will stand indefinitely no matter who the owner is, who the applicant, so that if the owner was to change, that variance criteria that you use to justify the variance, it still is true no matter who or what is the circumstance. So that there is a special geographical or physical circumstance on the property that's not common to property in the area.

That the variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner. And extraordinary hardship will result from strict compliance of the provisions of this title because of the special geographical or physical circumstance or condition affecting the property. That the special unique circumstances affect the property are not the result of previous actions pertaining to the subdivision. And the granting of the variance shall not be detrimental to public health, safety, or welfare. You can say that this kinda combines Title 19 and 16 for a subdivision.

So basically, those are the two different sets of standards that you'll be looking at next week for street improvements for subdivisions. One is triggered by a building permit and one is a pure subdivision. If there's any questions, I'll be happy to answer them from any of our Board Members. No be shame. Okay. Thank you.

Chairman Tanaka: Okay. Thanks, Trish. So I guess that's it for our meeting today. Oh, I mean, for the items on the agenda. Sorry. Approval of the March 24<sup>th</sup>, 2011 meeting minutes.

#### **E. APPROVAL OF THE MARCH 24, 2011 MEETING MINUTES**

Chairman Tanaka: I need a motion to approve.

Ms. Phillips: I'll make a motion to approve the minutes.

Mr. Tanner: Second.

Chairman Tanaka: Okay, so moved and seconded. That's it for – I mean, as far as approval of minutes?

Mr. Giroux: Yeah. Maybe I'll say something else. As far as the minutes goes, this is what would've been covered in the Sunshine Law section is that all of the Board meetings are recorded. So you don't have to really worry about whether or not the minutes are kept well or not. It's just that you are given an opportunity to review it just for accuracy. But if that's not done within 30 days, the public has a right to access those minutes, you know, if they're gonna read them, or rely on them, or anything like that. That's what would happen is that it's basically a record of your meeting. If you're in a contested case and you have a record, that becomes part of the record on appeal. And that would be relied in the judicial process.

Chairman Tanaka: Yeah, so, Pat, so basically, I mean, when it comes to meeting minutes, what I usually do is I just glance through and I look for, okay, "Mr. Tanaka," just to make sure that whatever I said, there isn't a mistake, and then not have to read every word of the last meeting.

Okay, Director's report, status on contested cases. Trisha, is there an update?

Ms. Kapua`ala: Before we move on, was there a vote on accepting the minutes?

Chairman Tanaka: No, sorry. It has been moved and seconded. All those in favor, please say aye.

It was moved by Ms. Phillips, seconded by Mr. Tanner, then

**VOTED: To approve the March 24, 2011 meeting minutes as written.**

**(Assenting: R. Phillips, R. Tanner, B. Santiago, S. Castro,  
R. Shimabuku, P. De Ponte)**

**(Excused: J. Haraguchi, B. Vadla)**

Ms. Kapua`ala: Thank you.

## **F. DIRECTOR'S REPORT**

### **1. Status Update on BVA's Contested Cases**

Ms. Kapua`ala: I do not have anything prepared for you, but I can tell you that one of your contested cases, the applicant withdrew. The Department of Public Works, the Director of Public Works, reversed the decision of the previous Director, and that applicant withdrew their application. This was an appeal concerning the definition of developable lots. Mr. Goode reversed the decision of Mr. Arakawa. And so that was withdrawn.

And one new thing, which happened yesterday, do you remember the Makila Nui and Ranches 1, 2, and 3 appeal? That appeal or that decision and order was appealed to Second Circuit Court by the Department, Deputy Corporation Counsel, Jane Lovell. So we'll give you more updates on that

as things happen.

Mr. Giroux: Trisha, is that the one that we need to get together and do the record of appeal?

Ms. Kapua`ala: Yes, we're working on that and we'll work with your office on that.

Mr. Giroux: Okay. It'll be me.

Ms. Kapua`ala: Okay, thank you for that clarification. I was assuming Jane.

Mr. Giroux: No, it'll still be me.

Ms. Kapua`ala: Okay, great.

**G. NEXT MEETING DATE: April 28, 2011**

Chairman Tanaka: And the next meeting you said there are a couple of variances, was it?

Ms. Kapua`ala: Yes, one subdivision and one building permit that requires road improvements. So two variances. Are we moving forward – this orientation to the next meeting or would you wanna wait till May?

Chairman Tanaka: I mean, as soon as possible when the other two Members are here although two variances have the potential to move quickly or move slowly. I mean, I don't wanna keep putting it off, and keep rescheduling and keep putting it off, but–

Ms. Kapua`ala: Well, I think our schedule would permit the carrying over of unfinished business into May with no problem considering the circumstances. Orientation and your Counsel's advice is important, so maybe we should just carry it on over to the next meeting, and see what happens as far as the two variances is concerned.

Chairman Tanaka: Now, would that be the first item on the agenda?

Ms. Kapua`ala: Yes, unfinished business, but you can change it. Public hearings are first. Is that correct?

Mr. Giroux: Yeah, I think an important part is that we – because if those are two variances, we're required to have public hearings, and those have notices that are given out 45 days ahead of time. So it would be important to get those – at least the public testimony portions of those two hearings done. And if we had to defer it to a time certain, that's fine, but then there's also deadlines for that. So what we could probably do is get those two variances out of the way, and then we can start on the orientation. And if we had to defer that, it would not raise any problem.

Chairman Tanaka: Yeah, I mean, even though that doesn't make sense to have the orientation after, but it's unavoidable.

Ms. Kapua`ala: Okay.

Chairman Tanaka: Tremaine, in your attempt at communicating with Bernice and the new Members, just reiterate the fact that we're – that's our concern that we wanna make sure that they've been introduced to the process and the requirements before we start hearing too many cases. Okay, so it'll be that way on the agenda, the last item. And hopefully, the two items will go fairly smoothly. So our next meeting will be April 28, 2011. Does anybody have any questions, any comments, any–? None? Alrighty. Oh, sorry.

Mr. De Ponte: Okay, I just wanted to know–these meetings are always in the afternoon?

Chairman Tanaka: Yes, we have this every other Thursday, twice a month, at 1:30.

Mr. De Ponte: At 1:30?

Chairman Tanaka: Yeah. Anything else? Alrighty, meeting adjourned.

#### **H. ADJOURNMENT**

There being no further business to come before the Board, the meeting adjourned at 2:01p.m.

Respectfully submitted by,



TREMAINE K. BALBERDI  
Secretary to Boards and Commissions II

#### **RECORD OF ATTENDANCE**

##### **Members Present:**

Kevin Tanaka, Chairman  
Rick Tanner, Vice-Chairman  
Bart Santiago, Jr.  
Rachel Ball Phillips  
Stephen Castro, Sr.  
Ray Shimabuku  
Patrick De Ponte

##### **Members Excused:**

Bernice Vadla  
Jacqueline Haraguchi

##### **Others:**

Francis Cerizo, Staff Planner, Planning Department  
Trisha Kapua`ala, Staff Planner, Planning Department  
James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel